

REMARKS**I. Claim Objections**

Claim 30 was objected to under 37 C.F.R. § 1.75 as being substantially a duplicate of claim 29. According to the office action, claim 29 is in condition for allowance and therefore the substantially duplicate claim should be objected to (See MPEP § 706.03(k)). In response, claim 30 is canceled by the foregoing amendment. Therefore, the objection under 37 C.F.R. § 1.75 is obviated.

II. The Rejection under 35 U.S.C. § 101 Should be Withdrawn

The Examiner rejected claims 13, 14, 26-28 and 33 under 35 U.S.C. § 101 asserting that the claims are directed to non-statutory subject matter. In particular, the Examiner stated that the claims as presented may encompass a human embryo or human egg. Claims 13, 14 and 33 are amended to recite “isolated cells,” to clarify that the claims are directed to cells for production of recombinant proteins. In addition, new claims 36 and 37 are directed to “non-human” host cells. These new claims were suggested by the Examiner at page 4 of the Action, and are supported in the specification at page 12, lines 7-12. Therefore, these claims are not directed to transgenic humans and do not encompass a property right in a human being.

Claims 26-28 are directed to methods of increasing proliferation of a cell, methods of increasing telomerase activity and methods of decreasing telomerase activity. These methods utilize cells that express a nucleic acid molecule of the invention. 35 U.S.C. § 101 defines the four categories of inventions that Congress deemed to be the appropriate subject matter of a patent as 1) processes, 2) machines, 3) manufactures and 4) compositions of matter. Processes are defined as “actions” such as inventions that consist of a series of steps or acts to be performed. See MPEP § 2106. The property right sought by claims 26-28 is a right to method of modifying the recited biological activity within a cell, and the right is not directed to the cell that is being modified. Therefore, claims 26-28 cannot be construed to encompass transformed or transfected human embryos or human eggs that might establish a property right in a human being.

Thus, claims 13, 14, 26-28 and 33 do not encompass non-statutory subject matter, and the Applicants request that the rejection of under 35 U.S.C. § 101 be withdrawn.

CONCLUSION

Applicants respectfully request that the Examiner exercise discretion in favor of entering the foregoing amendment, as this amendment puts the application in condition for allowance and does not raise any new issues requiring an additional search or significant examination. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejection and to pass this application to issue.

Respectfully submitted,

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